

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JAMES ARMSTRONG,

Plaintiff,

v.

METROPOLITAN LIFE INSURANCE
COMPANY,

Defendant.

Case No. 8:16-cv-89

(District Court of
Lancaster County, Nebraska,
Case No. CI 15-4354)

NOTICE OF REMOVAL

To: James Armstrong, his attorneys, and the Clerk of the United States District Court for the District of Nebraska.

Defendant, Metropolitan Life Insurance Company ("MetLife"), gives notice of the removal of the above-captioned action from the District Court of Lancaster County, Nebraska, to the United States District Court for the District of Nebraska. In support of this notice, MetLife states and alleges as follows:

1. Plaintiff filed the above-captioned action on November 30, 2015, in the District Court of Lancaster County, Nebraska, Case No. CI 15-4354. The original complaint included claims against two defendants, MetLife and the State of Nebraska. Accordingly, this action was not subject to removal at its commencement, because the State of Nebraska is not a "citizen" for purposes of diversity jurisdiction. *See Moor v. County of Alameda*, 411 U.S. 693, 717 (1973). However, on February 16, 2016, the District Court of Lancaster County, Nebraska, entered an order dismissing all claims brought against the State of Nebraska without prejudice, which order was received by MetLife on the same date. As a result, this action first became removable on February

16, 2016, and this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b)(3) within 30 days of MetLife's receipt of an "order or other paper from which it [could] first be ascertained that the case is one which is or has become removable," and within one year after commencement of the action. *Id.*; 28 U.S.C. § 1446(c)(1). See *e.g. Reece v. Bank of New York Mellon*, 760 F.3d 771, 774 (2014).

2. This Court has original jurisdiction over the issues remaining in this action pursuant to 28 U.S.C. § 1441(a) and (b) and 28 U.S.C. § 1332. The parties are citizens of different states, and are not citizens of the same state. The Plaintiff is a citizen of the State of Nebraska. The Defendant is a corporation organized and existing pursuant to laws of the State of New York, with its principal place of business in New York, New York. The Complaint seeks judgment for unpaid disability insurance benefits on and after August 8, 2014, and "continuing as long as [Plaintiff] remains disabled," and statutory attorney fees pursuant to Neb. Rev. Stat. § 44-359. Accordingly, without admitting or acknowledging the scope or extent of Plaintiff's claim, the remaining allegations of the Complaint serve to place at issue an amount in controversy in this action, exclusive of interest and costs, exceeding the sum of \$75,000.

3. True and correct copies of all process, pleadings, and orders served upon MetLife in the state action are attached and incorporated by this reference as Exhibit 1.

4. A true and correct copy of the Notice of Removal that has been delivered for filing with the Clerk of the District Court of Lancaster County, Nebraska, is attached and incorporated by reference as Exhibit 2.

WHEREFORE, MetLife respectfully provides notice of the removal of this action from the District Court of Lancaster County, Nebraska, to the United States District

Court for the District of Nebraska, and prays for such further relief as this Court finds appropriate.

REQUEST FOR PLACE OF TRIAL

MetLife respectfully requests that the trial of this action be held in Omaha, Nebraska.

Dated this 23rd day of February, 2016.

METROPOLITAN LIFE INSURANCE
COMPANY, Defendant.

By: s/Steven D. Davidson
Steven D. Davidson (#18684)
of: BAIRD HOLM LLP
1500 Woodmen Tower
Omaha, Nebraska 68102
(402) 344-0500
Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2016, a true and correct copy of the foregoing was sent by United States mail, first-class postage prepaid, to the following:

Douglas Pauley
Conway, Pauley & Johnson, P.C.
P.O. Box 315
Hastings, NE 68902-0315

s/Steven D. Davidson